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THE NEW QUEBEC LEGISLATION ON PROFESSIONS

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President of the Quebec
Professions Board

ADDRESS DELIVERED IN MONTREAL, ON MAY 11th 1974, TO THE MEMBERS OF L'ASSOCIATION MEDICALE DU QUEBEC.

RESUME

The professional service is a public service and the professional corporation a mechanism that society gives itself to control the quality of its services. The necessity to guarantee the protection of the public in matters of professional service is the basic philosophy of the legislation on professions adopted in July 1973 by the Québec National Assembly. The Professional Code, until recently known under the title "bill 250", is the kingpin of this legislation.

Chairman of the Québec Professions Board, a supervisory body created by the Professional Code whose mandate is to see to it that each professional corporation ensures the protection of the public where the activities of its members are concerned, Me René Dussault, in the following report, recalls the history of the reform of professions, brings out the outstanding points of the new professional legislation, defines the role and functions of the Québec Professions Board, and finally outlines the priorities that the Québec Professions Board has given itself for the year 1974-1975.

SUMMARY

1. ORIGIN OF THE PROFESSIONAL CODE AND OTHER PROFESSIONAL ACTS.

2. HIGHLIGHTS

(1) Maintaining the principle of professional self-governing professions

(2) Protecting the public, main function of the professional corporation

(3) Public representation on the board of professional corporations

(4) Criteria governing constitution of new professional corporations

(5) Professions with the exclusive right to practice and professions with a reserved title

(6) Adaptation of field of professional practice

(7) Supervision of proficiency and professional ethics

(8) Linking the academic and professional fields

(9) Eligibility of foreigners to professional corporations

(10) Working knowledge of the French language.

(11) The Québec Interprofessional Council

III. ROLE AND FUNCTIONS OF THE QUEBEC PROFESSIONS BOARD

A. Administrative Functions

B. Regulatory Functions

C. Consultative Functions

IV. THE PROFESSIONS BOARD'S PRIORITIES FOR 1974-1975

THE NEW QUEBEC PROFESSIONAL LEGISLATION

On July 6, 1973, the Québec National Assembly adopted bill 250, or the Professional Code, and twenty-one individual acts governing some thirty-eight corporations of which twenty-one have an exclusive right to practice. The recent enforcement of this considerable legislative mechanism has constituted a major step in the reform of professions now taking place in Québec. This is the transformation I wish to discuss.

First, it would be advisable to make a brief presentation of the circumstances under which the Professional Code and the different related professional Acts were adopted and to insist on some of the provisions which to me seem the most important. Afterwards, I will establish the rôle and functions of the Québec Professions Board as provided for by this legislation.

1. ORIGIN OF THE PROFESSIONAL CODE AND OTHER PROFESSIONAL ACTS

The adoption of the Professional Code and various related Acts is the result of a long study, inquiry and discussion process which spread out over a period of some ten years. Since the early 1960s, the break-up of the traditional concept of professions, inefficiency of laws governing professions and pressing demand for the creation of new professions has led to a reconsideration of the existing professional organization framework. In fact, the so-called "liberal" professions are experiencing deep transformations, the great majority of their members find themselves in

an employer-employee relationship and the consumer society demands that stronger emphasis be placed on an efficient distribution of their services. Furthermore, on account of an increasingly specialized definition of rôles and social statutes, new professions are emerging to satisfy the growing needs of new services and of an unceasingly changing technology.

In 1966, these changes led the government to entrust the Commission of Enquiry on Health and Social Welfare with a mandate to examine the whole question of the professional organization in Québec in these two fields. In its report on the subject, published during the summer of 1970, the Commission, after studying the fundamental elements of the concept of professions, recommended a thorough reorganization of the professional organization which, in their opinion, should apply not only to the professions in the fields of health and social services but also to all other professions in Québec.

In the fall of 1971. the government decided to apply to all professions the recommendations proposed by the Commission of Enquiry on Health and Social Welfare and tabled before the Québec National Assembly a number of legislative measures, the principal component of which was a bill with far-reaching implications called the Professional Code and twenty-three special bills each relating to a particular profession. Immediately after their first reading, these bills were referred to an ad hoc Parliamentary Committee responsible for their study and for the hearing of representations from all organizations, groups or individuals

concerned with the matter. The Committee sat for over a year at the rate of at least one session a week throughout the course of which it studied more than one hundred and fifty briefs.

In the fall of 1972, at the conclusion of the hearings before the Parliamentary Committee, the government tabled in the Québec National Assembly a revised version of all the bills concerning the professions. These bills were finally passed in the early summer of 1973.

Following the adoption of all this legislation, there is no doubt, I believe, that the statute and rôle of professional corporations, as administrative bodies of professions, are more clearly established now than they were before since there is no ambiguity left as to the nature of their primary function which is to ensure the protection of the public. In adopting these legislative measures, the Parliament clearly demonstrated its confidence in the mechanism of the professional corporation as a valid tool for administering the professions and for the protection of the public.

II. HIGHLIGHTS

At the time of the revision of all the existing professional legislation, some fundamental questions were dealt with and solutions were found which should, in the medium or

long term, favor the best possible distribution of professional services to the population.

1) MAINTAINING THE PRINCIPLE OF SELF-GOVERNING PROFESSIONS

The new professional legislation clearly demonstrates the confidence which the legislator have in the system of the professional corporation as a management tool with regard to the professions and the protection of the public, and emphatically upholds the professional self-administrative principle. However, it contains two important modifications: on the one hand, it provides for the presence of persons representing the public within professional organizations and, on the other hand, the creation of the Québec Professions Board, a supervisory body whose main function is to make sure that Professional Corporations are fulfilling their duties satisfactorily.

2) PROTECTING THE PUBLIC, MAIN FUNCTION OF THE PROFESSIONAL CORPORATION

The Professional Code is particularly explicit on this point. Section 23 provides that "the function of each corporation shall be to ensure the protection of the public", and section 12 entrusts the Québec Professions Board with the task of seeing that each corporation assumes this function of prime importance. These provisions, as

well as the general tone of the Professional Code and related legislation, leave no doubt about the spirit in which the corporations must exercise the powers conferred to them by the Assembly. In practice, this means that from now on the professional corporation may not assume this rôle and at the same time protect the economic and social interests of its members. The defence of these interests should rather be assumed by a union-type association.

3) PUBLIC REPRESENTATION ON THE BOARD OF PROFESSIONAL CORPORATIONS

While admitting the validity of the management of professional activities by the professionals themselves, the National Assembly has nevertheless believed it important to have on the Bureau of each professional corporation a number of persons who are not members of the corporation concerned. The purpose of this outside presence is to open to society the decision-making process within professional organizations, decisions which very often concern not only the professional themselves but also society as a whole.

At the most important level, which is the Bureau of the corporation, this presence is assured by two, three or four directors depending on whether the corporation has less than 500 members, between 500 and 1,500 members or more than 1,500 members. The "outside" directors, of whom half must not be members of any professional corporation, are appointed by the Professions Board after

consultation with the Interprofessional Council and the different socio-economic groups. Representing the public and not the government or the Professions Board, these directors, once appointed to the Bureau of a corporation are full members and are not subject to any particular status. As provided for under section 77 of the Professional Code, "they shall receive the same remuneration, perform the same duties, have the same powers and be subject to the same obligations" as the elected directors. They must therefore exercise their duties as public representatives within the corporation by using the same means of expression as the other directors.

4) CRITERIA GOVERNING CONSTITUTION OF NEW PROFESSIONAL CORPORATIONS

For the first time in Québec, and doubtless in Canada, the legislator has defined the criteria upon which the government, acting upon the recommendation of the Professions Board and Interprofessional Council, will have to determine if a group of persons should be formed into a professional corporation. In addition to the criterion of the protection of the public, which is a priority, these criteria are, under section 25 of the Professional Code, as follows:

- the level of knowledge required of members of the future corporation in the practice of their activities;

- the degree of autonomy enjoyed by these persons in their work;

- the difficulty of judging the quality of these professional activities by people who do not have similar training and qualifications;

- the vulnerable position of the public with respect to these persons because of the fact that they provide members of the public with care or are entrusted with their affairs;

- the personal nature of the relation between these persons and those who require their services and the confidential nature of their communications;

- the harmful prejudices or damage which the public may encounter through the absence of adequate control over the professional integrity and proficiency of these persons.

Though they are not at all exhaustive, when considered as a whole, these criteria reveal the spirit in which the constitution of groups of persons into new professional corporations must be envisaged.

5) PROFESSIONS WITH THE EXCLUSIVE RIGHT TO PRACTICE AND PROFESSIONS WITH A RESERVED TITLE

Once a group of persons has been able to show the necessity of being constituted into a professional corporation, the Professional Code provides the possibility of forming it into a profession with the exclusive right to practice or a profession with a reserved title. In the first case, the incorporation which is effected in the National Assembly by the adoption of a special Act, gives

the members of the corporation thus constituted the double monopoly of the practice of their professional activity and the use of the title attached to it; in the second case, it gives them only the exclusive right to the professional title, and this is effected by letters patent of the Lieutenant-Governor in Council, by virtue of section 27 of the Professional Code. Of the thirty-eight corporations at present recognized by the Professional Code, seventeen have a reserved title and twenty-one the exclusive right to practice, each one of the latter being constituted by a special act adopted at the same time as the Professional Code.

It should be noted that, of these thirty-eight professions, nine are newly created. Of these, five are professions with a reserved title: occupational therapist, dental hygienist, nurse and nursing assistant, physiotherapist, medical technologist; four are professions with exclusive right to practice: hearing-aid technician, chiropractor, denturologist and podiatrist.

The criterion which makes it possible to determine cases where incorporation implies the granting of an exclusive field of practice rather than the mere attribution of a reserved title, is defined as follows under section 26 of the Professional Code:

> The members of a corporation shall not be granted the exclusive right to practise a profession except by an act; that right must not be granted except in cases where the acts done by these persons are of such a nature and the freedom to act they have by reason of the nature of their ordinary working conditions are such that for the protection of the public they can not be done by persons not having the training and qualifications required to be members of the corporation.

6) ADAPTATION OF FIELDS OF PROFESSIONAL PRACTICE

Reconciliation of the need to reserve to a group of persons, for the protection of the public, certain fields of activity with the fact that it is imperative that the professions evolve is one of the major challenges facing the dynamic evolution of the dispensation of professional services. In this connection, I will give but one example, that of doctors and nurses. The latter say that, for a number of years, they have been placed in an illegal situation called upon as they are, particularly in hospitals, to perform services normally provided by physicians. In such a case, as in many others, particularly in the area of health services, a mechanism to make the field of practice more flexible was found to be necessary.

Consequently, where the protection of the public unreservedly necessitates the establishment of a professional corporation whose members have an exclusive right to practice their profession, the legislation governing the professions provides for a more flexible definition of the field of professional practice according to current needs

as well as mechanisms which make possible the necessary evolution. Thus, the Acts constituting the professions of chemist, dentist, nurse, physician, optometrist, pharmacist and podiatrist stipulate that the Bureau of these professional corporations must adopt a regulation determining which of the services dispensed exclusively by their members may, under certain conditions, be carried out by classes of persons other than said members. Such a regulation must be adopted within a time limit set by the Professions Board, in consultation with this Board and with the corporation concerned, if need be, or with the most representative organizations of these classes of persons. It is also provided that if this mechanism does not permit the adoption of the regulation within the period prescribed, the Professions Board will itself adopt the required regulation.

We can anticipate that this mechanism permitting to modify the field of professional practice, while preventing the multiplication of situations of illegal practice, will have the effect of encouraging a distribution of professional services commensurate with current needs.

7) SUPERVISION OF PROFICIENCY AND PROFESSIONAL ETHICS

Considering the rapidity with which acquired knowledge becomes obsolete for any person who does not take the trouble to keep abreast of new developments through further training, professionals can rapidly become so to speak "disoriented" with regard to new knowledge or techniques.

This situation, which can have a considerable influence on the quality of the services offered, has been to date too often confused with another situation which has had the same effect, where the professional has behaved in a reprehensible manner according to the code of ethics. Even though the quality of these services can be affected in both cases, the action to be taken to correct the situation has to be very different in each of these cases.

Thus, the Professional Code clearly separates the idea of "professional inspection" which is designed to ensure professional proficiency and that of "discipline" which aims at penalizing conduct contrary to the professional code of ethics. It has been clearly established that from now on professional inspection is a positive measure, distinct from discipline. Professional inspection, since it inevitably results in recommendations relating to, for example, measures for further training as opposed to discipline, does not therefore constitute, by any means, a negative or repressive measure.

Under the Professional Code therefore, two separate statutory committees are set up within each professional corporation: the professional inspection committee, consisting of three members appointed by the Bureau of the corporation, which also designates one of them as chairman, and the committee on discipline, consisting of at least three members, including a chairman appointed by the Lieutenant-Governor in Council, after consultation with the Bar from among lawyers with at least ten years' experience. The other two members of the committee on discipline are designated by the Bureau of the corporation from among its own members.

While with regard to discipline the Professional Code aims primarily at the standardization and systemization of the rules of procedure used and the possible penalties, with regard to professional inspection, it institutes something fundamentaly new by giving a strict definition of this concept and by providing for the creation, within each corporation, of a professional supervision committee consisting of members of the concerned corporation. Since it results in measures for further training, professional inspection constitutes an intermediary measure between the granting of a permit to practice for life without the possibility or reexamination of the proficiency of the professional who benefits from it and the granting of a permit with a right to practice which is renewable every three or five years.

8) LINKING THE ACADEMIC AND PROFESSIONAL FIELDS

One of the major challenges of this decade in the field of education is the reconciliation of the requirements of academic training with those of the professional training of professionals: in other words, the meeting point between theory and practice.

The mechanism used to realize this objective is the following: within the Province of Québec, the Lieutenant-Governor in Council approves diplomas required for a licence to practice or for a specialist's certificate as well as the teaching institutions which award such diplomas. As for diplomas awarded by institutions outside the province, approval is given, in practice, by the professional corporation concerned.

In order to facilitate, within the bounds of possibility, the granting of licences to practice by professional corporations on the sole basis of the diplomas required for such licences, the Professional Code provides for the following procedure: the Lieutenant-Governor in Council establishes by regulation, after consultation with the Professions Board, the Council of Universities, the teaching institutions and the professional corporation concerned, the methods of collaboration of the corporations with the authorities of Quebec's teaching institutions in the preparation of study programs leading to the diplomas required for a

licence as well as in the preparation of examinations or other methods of evaluating the persons pursuing these studies.

However, since the reconciliation mentioned above cannot always be realized in the short term, the Professional Code provides that a professional corporation may, even after the application of this mechanism stipulate additional requirements over and above the degrees or diplomas necessary to obtain a licence to practice, such as examinations or periods of training. For this purpose, it must adopt a regulation which will, however, like any other regulation of the corporation, have to be approved by the Lieutenant-Governor in Council.

9) ELIGIBILITY OF FOREIGNERS TO PROFESSIONAL CORPORATIONS

At one time or another, we have all been made aware of the difficulties encountered by foreigners wishing to practice in Québec before obtaining their Canadian citizenship. The recently adopted legislation defines the position of these foreigners wishing to become members of professional corporations. In fact, it is provided that, to become a member of a professional corporation, the foreign professional must, obviously in addition to having the necessary proficiency, simply become a landed immigrant with the intention of remaining in Canada and undertaking to apply for citizenship as soon

as this becomes feasible under the Canadian Citizenship Act; he must also have permanent residence in the Province of Québec and have a working knowledge of the French language.

However, this general rule has three exceptions. Indeed, Canadian citizenship is required to become a member of the lawyers', notaries' and land surveyors' professional corporations, since persons practicing these professions are considered as public officers.

10) THE WORKING KNOWLEDGE OF THE FRENCH LANGUAGE

The Professional Code, in the field it governs, is paving the way toward a solution of the crucial language problem in Québec. It provides that, as of July 1, 1976, no Canadian citizen will be able to join a professional corporation unless he passes an examination in the use of the French language. Nevertheless, certain modifications are made to this rule for persons who, being legally authorized to practice a profession in a province other than Québec, wish to practice in Québec; in addition to the three month special authorization and the one year temporary permit that they may obtain under the same conditions as foreigners who do not have a working knowledge of the French language, they will be entitled to a restrictive permit which authorizes "its holder to practice his profession exclusively for one employer in a position that would not entail any dealing with the public" (section 48).

Those who do not hold Canadian citizenship have been required, since 1970, to take a French language test in the year following their temporary admission to a professional corporation. In case of failure, their temporary licence to practice is not renewed unless the government considers it in the public interest to allow them a year's grace. These conditions are upheld by the Professional Code.

11) THE QUEBEC INTERPROFESSIONAL COUNCIL

In addition to dealing with these fundamental questions, it appeared important to the legislator to assure interprofessional coordination and consultation. The Professional Code recognizes the existence of an organization created a few years ago under the part three of the Companies Act which fulfills this function; this is the Québec Interprofessional Council. It is an organization consisting of the president or a representative of each of the professional corporations. The role which devolves upon it and the fact that it is representative of the professional milieu make this organization an essential instrument for the implementation of the reform contemplated in the Professional Code and in the related Acts.

III. THE QUEBEC PROFESSIONS BOARD: ITS ROLE AND ITS FUNCTIONS

The Québec Professions Board, created by virtue of the Professional Code, is a unique body and is, to my knowledge, the first of its kind in the world; it controls the whole of the reform of the professions in Québec.

Occupying a central position with regard to the reform of the professions between the government and all the professional corporations this body, whose main function is to ensure that each professional corporation adequately fulfills its duty of protecting the public, constitutes the pivot essential to the implementation of the Professional Code and related acts. It has five members, including a chairman and a vice-chairman who are obliged to serve on a full-time basis. Three of its members are chosen from a list of names supplied by the Québec Inter-professional Council.

As regards its internal organization, the Professions Board has, besides a secretariat headed by a secretary, five professional support services, namely a legal service, a research service, an information service, a financial analysis service and a documentation and data-processing service. To fulfill all its functions, the Professions Board has a staff of about thirty-five persons. Moreover, the Professions Board appoints regularly specialized consultants employed temporarily on a contract basis to deal with specific and highly specialized tasks such as, for example, preparing examination

systems for new professions with an exclusive right to practice audioprosthesis, chiropractic, denturology, podiatry, or the elaboration of standards for the issuance and holding of licences to practice radiology.

As for its functions, the Québec Professions Board is at once an administrative, regulatory and consultative body. However, having no judicial powers to deal with individual cases, such as issuing permits, hearing appeals and others, it does not in any way constitute an administrative tribunal.

A. Administrative functions

1. Appointments

One of the Board's most important and most difficult functions is the appointment of outside members to the Bureau of each of the professional corporations. The appointment must be made after consultation with the interprofessional Council as well as with different socio-economic groups.

The law also makes it incumbent upon the Québec Professions Board to appoint all the members of the provisional Bureau of the new professional corporations with exclusive rights to practice. The Board is vested

with a similar authority with respect to two of the new corporations of professionals with reserved title, namely the corporation of dental hygienists and the corporation of nurses and nursing assistants. The term of office of each of the members of these provisional bureaus is three years.

2. Supervision, Control and Investigation

The authority vested in the Professions Board under this heading may result in

a) the exercise of regulatory powers in place and instead of a given corporation;

b) a recommendation to place a professional corporation under trusteeship on account of an adverse financial balance or an income insufficient to meet its obligations.

3. Examinations

One of the most complex tasks assigned to the Québec Professions Board is that of setting entrance examinations for the new professions with an exclusive right to practice, such as audioprosthesis, chiropratic, denturology and podiatry. The law leaves it to the discretion of the Professions Board to vary examination requirements for different categories of candidates, depending on how long they have been in practice. The examinations are supervised by a board of examiners whose chairman and three members are appointed by the Québec Professions Board.

4. Recommendations

The Professions Board has been invested with the important power of making recommendations respecting:
1° the constitution of new professional corporations, and the merger or dissolution of existing corporations;
2° changes in the legislation governing the professions;
3° measures designed to provide the best possible academic and professional training.

It is also provided that the Professions Board must recommend to the Lieutenant-Governor in Council for approval, after consultation with the corporation and other organizations concerned, a schedule of fees for the members of that professional corporation when the fees for their services have not been laid down by collective agreement or by law.

5. Stimulation

Another important function of the Québec Professions Board is that of encouraging the collaboration of professional corporations. The Professional Code stipulates that the Professions Board, in collaboration with the Interprofessional Council, must encourage concerted action on the part of the professional corporations in an effort to find solutions to the problems that are common to them, particularly where the members exercise related professions.

6. Information and publicity

The Québec Professions Board is responsible for publishing an annual case report containing the decisions rendered by the committees on discipline of the professional corporations and by the professions Tribunal, leaving out the names of the parties involved. The Professions Board is also responsible for the publication, in the Québec Official Gazette, of all final decisions involving the permanent striking off the roll of a professional or the cancellation of this licence to practice. This will result in much less secrecy surrounding the disciplinary procedures instituted by professional corporations. Lastly, the Professions Board must submit an annual report of its activities.

B. Regulatory Functions

The Professional Code and the laws relating to the professions provide that a certain number of regulatory powers must be exercised by the Québec Professions Board. Thus, for example, except in the case of physicians, veterinary surgeons and dentists, it is provided that the Professions Board shall set the standards for the issuance and holding of licences enabling the holders to practice radiology on living beings. To this end, the Board must seek the collaboration of experts including, in particular, members of the professions involved. It is also provided that the Professions Board shall draw up a list of medicines which podiatrists can prescribe and also a list of medicines which only veterinary surgeons can prescribe.

Moreover, the Board has vast regulatory powers which it may exercise if a professional corporation fails to adopt regulations respecting certain matters. These powers cover the following: 1° code of professional ethics, 2° arbitration procedures for the accounts of members, 3° compensation funds, 4° procedures for professional inspection committees, 5° rules on how to keep, use and destroy records, 6° the fact which members of a corporation are allowed to make known to the public and the conditions under which this may be done, 7° the quorum required for the holding of general meetings by the members of a professional corporation, 8° the delegation of authority to perform certain services generally reserved exclusively for the members of a given professional corporation to persons in other categories, 9° amendments to regulations adopted by professional corporations respecting previous matters.

C. Consultative functions

The Québec Professions Board must serve in the capacity of consultant to both the Lieutemant-Governor in Council and the various professional corporations. Thus, the Québec Professions Board advises the Lieutenant-Governor in Council on:

a) the determination of diplomas giving access to a licence to practice or a specialist's certificate;

b) the terms and conditions of collaboration by corporations with the authorities of teaching institutions in Québec, in the preparation of study programs leading to a diploma giving access to a licence to practice or a specialist's certificate and in the preparations of examination papers or other assessment procedures for persons following the program;

c) the division of the Province of Québec into regions and the type of representation each of the regions is to have on the Bureau of each of the corporations;

d) the incorporation by letters patent of all newly established corporations representing professions with reserved title to practice;

e) certain other matters such as standards for the drafting, contents and updating of membership lists, conditions for setting up, financing and administering compensation funds, and rules to be followed by the corporations in making their annual reports.

THE PROFESSIONS BOARD'S PRIORITIES FOR 1974-1975

For 1974-1975, the Professions Board has set itself the following five priorities:

1. The appointment of outside members to the board of each professional corporation. These outside members will have to be truly representative of the public but they will also have to be able to make a meaningful contribution to the decision-making process within each corporation. The appointments are expected to be completed by early fall.

2. The establishment of the new professional corporations of chiropractors, denturologists, hearing aid acousticians and podiatrists, bearing in mind the protection of the public with regard to standards of professional proficiency. The main prerequisite in this case is the preparation of entrance examinations by the Professions Board. These should be ready by autumn.

3. Enforcement of professional inspection and discipline in each of the professional corporations. The Professions Board will ensure t-is by using all the means at its disposal and, more particularly, the regulations governing the professions.

4. Delegation of authority by a professional group respecting certain services exclusively performed by it to other groups, in accordance with the provisions of the law. The Professions Board will ensure that these provisions are implemented so as to provide a more efficient distribution of professional services. Thus, for example, some of the tasks of physicians will be assigned to nurses, some of the tasks of dentists to dental hygienists and some of the tasks of pharmacists to pharmacy attendants.

5. Co-operation between educational and professional institutions. The Professions Board intends to take the lead in setting up the mechanisms that the Professional Code provides for the co-operation of educational institutions, both at university and CEGEP levels, and the professional bodies with a view to ensuring efficient professional training. The recent dispute between law students of the school of professional training and the Quebec Bar demonstrates the necessity and urgency of establishing such mechanisms. Situated, as it were, at the crossroads of the world of education and the professional community, the Professions Board is in a unique position for playing a decisive part in this respect.

Each of these five objectives represents a big and difficult task. However, the Quebec Professions Board is determined to accomplish these tasks in the course of 1974-1975, for it is convinced that in doing so it will have advanced to a very considerable extent the measures to protect the public in the area of professional services in Quebec.

We have presented here briefly the rôle and functions of the Québec Professions Board within the program for the reform of professions. In conclusion, I would like to emphasize that the success of the application of all the legislation recently adopted by the Québec National Assembly rests first and foremost upon the active and motivated collaboration of the whole professional community which, without any doubt, will accept the challenge with enthusiasm.